IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

KATHY L. HELTON,	)	
Plaintiff	)	**Case No. 1:04cv00059**
	)	
v.	)	
	)	**MEMORANDUM OPINION**
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	By: PAMELA MEADE SARGENT
Defendant	)	United States Magistrate Judge

In this social security case, I vacate the final decision of the Commissioner denying benefits.

I. Background and Standard of Review

Plaintiff, Kathy L. Helton, filed this action challenging the final decision of the Commissioner of Social Security, ("Commissioner"), denying plaintiff's claim for a period of widow's insurance benefits based on disability, ("DWIB"), under the Social Security Act, as amended, ("Act"), 42 U.S.C.A. §§ 402(e) and 423(d) (West 2003). Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g). This case is before the undersigned magistrate judge upon transfer pursuant to the consent of the parties under 28 U.S.C. § 636(c)(1).

The court's review in this case is limited to determining if the factual findings of the Commissioner are supported by substantial evidence and were reached through application of the correct legal standards. *See Coffman v. Bowen*, 829 F.2d 514, 517

(4th Cir. 1987). Substantial evidence has been defined as "evidence which a reasoning mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). '"If there is evidence to justify a refusal to direct a verdict were the case before a jury, then there is "substantial evidence."'" *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990) (quoting *Laws*, 368 F.2d at 642).

Helton filed her application for DWIB on or about March 19, 2003, alleging that she became disabled on January 1, 2002, due to her "nerves." (Record, ("R."), at 44-47, 52.) The Commissioner denied Helton's claim both initially and upon reconsideration. (R. at 29-33, 34, 36-38.) Helton then requested a hearing before an administrative law judge, ("ALJ"). (R. at 39.) A hearing before an ALJ was held on February 24, 2003, at which Helton was represented by counsel. (R. at 212-27.)

By decision dated April 13, 2004, the ALJ denied Helton's claim. (R. at 13-20.) The ALJ found that Helton met all of the nondisability requirements for widow's benefits through May 2008.[1] (R. at 19.) The ALJ found that Helton had not engaged in substantial gainful activity since her alleged disability onset date. (R. at 19.) The ALJ also found that the medical evidence established that Helton suffered from a severe mental impairment, but he found that her impairment did not meet or medically

[1]To qualify for DWIB, an individual must show that she is the widow of a deceased wage earner, has attained age 50, is unmarried (with certain exceptions) and is under a disability which began no later than seven years after the wage earner's death or seven years after she was last entitled to survivor's benefits. *See* 20 C.F.R. § 404.335 (2004).

equal an impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 19.) The ALJ found that Helton had no past relevant work. (R. at 19.) The ALJ further found that Helton had the residual funtional capacity to perform simple, low-stress jobs that did not involve working with the public. (R. at 19.) Based on Helton's age, education and past work experience and the testimony of a vocational expert, the ALJ found that jobs existed in the national economy which Helton could perform. (R. at 19-20.) These included jobs as a truck driver helper, a maid, a janitor, a farm worker, a nonconstruction laborer and a production machine tender. (R. at 20.) Thus, the ALJ found that Helton was not disabled as defined by the Act and was not eligible for benefits. (R. at 20.) *See* 20 C.F.R. § 404.1520(g) (2004).

After the ALJ issued his decision, Helton pursued her administrative appeals, (R. at 8), but the Appeals Council denied her request for review. (R. at 5-7.) Helton then filed this action seeking review of the ALJ's unfavorable decision, which now stands as the Commissioner's final decision. *See* 20 C.F.R. § 404.981 (2004). The case is before this court on the Commissioner's motion for summary judgment filed November 22, 2004, and Helton's motion for summary judgment October 22, 2004.

II. Analysis

Helton was born in 1946, (R. at 44), which classifies her as a person of advanced age. *See* 20 C.F.R. § 404.1563(e) (2004). Helton has a seventh-grade education and prior work experience as a laundry attendant. (R. at 62, 176-77.)

In rendering his decision, the ALJ reviewed records from Honaker Family

Health Center; Brian E. Warren, Ph.D., a licensed clinical psychologist; Clinch Valley Medical Center; Howard Leizer, Ph.D., a state agency psychologist; and Russell County Schools. Helton's counsel also submitted additional records from Cumberland Mountain Community Services to the Appeals Council.[2] (R. at 7.)

The Commissioner uses a five-step process in evaluating disability in DWIB claims. *See* 20 C.F.R.§§ 404.335(c), 404.1505, 404.1520 (2004); *see also Heckler v. Campbell*, 461 U.S. 458, 460-62 (1983); *Hall v. Harris*, 658 F.2d 260, 264-65 (4th Cir. 1981). This process requires the Commissioner to consider, in order, whether the claimant is 1) working; 2) has a severe impairment; 3) has an impairment that meets or equals the requirements of a listed impairment; 4) can return to her past relevant work; and 5) if not, whether she can perform other work. *See* 20 C.F.R. § 404.1520 (2004). If the Commissioner finds conclusively that a claimant is or is not disabled at any point in this process, review does not proceed to the next step. *See* 20 C.F.R. § 404.1520(a) (2004).

Under this analysis, a claimant has the initial burden of showing that she is unable to return to her past relevant work because of her impairment. Once the claimant establishes a prima facie case of disability, the burden shifts to the Commissioner. To satisfy this burden, the Commissioner must then establish that the claimant has the residual functional capacity, considering the claimant's age, education

[2]Since the Appeals Council considered this evidence in reaching its decision not to grant review, this court also should consider this evidence in determining whether substantial evidence supports the ALJ's findings. *See Wilkins v. Sec'y of Dep't of Health & Human Servs.*, 953 F.2d 93, 96 (4th Cir. 1991).

and work experience, to perform alternative jobs which exist in the national economy. *See* 42 U.S.C.A. § 423(d)(2) (West 2003); *McLain v. Schweiker*, 715 F.2d 866, 868-69 (4th Cir. 1983); *Hall*, 658 F.2d at 264-65; *Wilson v. Califano*, 617 F.2d 1050, 1053 (4th Cir. 1980).

By decision dated April 13, 2004, the ALJ denied Helton's claim. (R. at 13-20.) The ALJ found that Helton had the residual funtional capacity to perform simple, low-stress jobs that did not involve working with the public. (R. at 19.) Based on Helton's age, education and past work experience and the testimony of a vocational expert, the ALJ found that jobs existed in the national economy which Helton could perform. (R. at 19-20.) These included jobs as a truck driver helper, a maid, a janitor, a farm worker, a nonconstruction laborer and a production machine tender. (R. at 20.) Thus, the ALJ found that Helton was not disabled as defined by the Act and was not eligible for benefits. (R. at 20.) *See* 20 C.F.R. § 404.1520(g) (2004).

In her brief, Helton argues that substantial evidence fails to exist in the record to support the ALJ's finding that she was not disabled. (Brief In Support Of Plaintiff's Motion For Summary Judgment, ("Plaintiff's Brief"), at 3-4.) In particular, Helton argues that substantial evidence does not exist to support the ALJ's finding that her mental impairment does not meet or equal the requirements of the listed impairment for mental retardation found at 20 C.F.R. Part 404, Subpart P, Appendix 1, §12.05. Based on my review of the record, I agree.

To qualify as disabled under 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.05(C), a claimant's condition must meet two requirements: (1) a valid verbal,

performance or full-scale IQ score of 60 through 70 and (2) a physical or other mental impairment imposing additional and significant work-related limitation of function. The Secretary's regulations do not define the term "significant." However, this court previously has held that it must give the word its commonly accepted meanings, among which are, "having a meaning" and "deserving to be considered." *Townsend v. Heckler*, 581 F. Supp. 157, 159 (W.D. Va. 1983). In *Townsend*, the court also noted that the antonym of "significant" is "meaningless." *See Townsend*, 581 F. Supp. at 159. The regulations do provide that "where more than one IQ is customarily derived from the test administered, e.g., where verbal, performance, and full scale IQs are provided in the Wechsler series, we use the lowest of these in conjunction with 12.05." 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.00(D)(6). *See Flowers v. U.S. Dep't of Health & Human Servs.*, 904 F.2d 211 (4th Cir. 1990).

In this case, the ALJ found that Helton suffered from a severe mental impairment, which imposed restrictions on her work-related abilities, in that he found that Helton could perform only simple, low-stress jobs that did not involve working with the public. (R. at 19.) Thus, the ALJ found that Helton's impairment met the second prong of § 12.05(C). The record also contains evidence that Helton's IQ was in the 60-70 range, meeting the first prong of § 12. 05(C). Brian E. Warren, Ph.D., a licensed clinical psychologist, performed a psychological evaluation of Helton on August 26, 2003. (R. at 100-05.) As part of that evaluation, Warren administered the Wechsler Adult Intelligence Scale–III, ("WAIS-III"), which placed Helton's full-scale IQ score at 64, her verbal IQ score at 66 and her performance IQ score at 67. (R. at 102-03.)

The ALJ discounted these findings by claiming that they were contradicted by school records showing that Helton's IQ scores, at that time, were in the range of 77 to 95. (R. at 16-17.) Helton's school records do make mention of three different IQ scores on tests administered in 1959-61 when Helton was in the sixth, seventh and eighth grades. (R. at 178-80.) At least two sets of these scores, however, were based on the "California Short-Form Test Of Mental Maturity." (R. at 178-79.) The other set of scores was based on the "Lorge Thorndike Int." test. (R. at 180.) The undersigned is unfamiliar with whether these tests should be considered a "standardized intelligence test" as required by the regulations, and this record contains no expert opinion addressing the issue.

Furthermore, the regulations themselves recognize that the results of intelligence tests "are only part of the overall assessment." 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.00(D)(6) (2004). Helton's school tests scores reflect that she consistently scored in the lowest 10 percentiles in many areas. (181-85.) Helton's school records also show that she left school in her second attempt to complete the eighth grade. In her first attempt at completing the eighth grade, Helton failed every subject other than mathematics, in which she received a "D." (R. at 177.) These school records show that Helton also repeated the seventh grade. (R. at 176.)

All this being the case, Warren found that Helton suffered from mental retardation. (R. at 105.) This record contains no evidence to the contrary from any qualified mental expert. In particular, the evidence contained in the record from Cumberland Mountain Community Services and from the state agency physicians does not address the issue of mental retardation. (R. at 106-49, 160-74, 188-211.) By finding

that Helton did not suffer from mental retardation, the ALJ necessarily rendered a psychological opinion which he is not qualified to render. *See Young v. Bowen*, 858 F.2d 951, 956 (4th Cir. 1988); *Wilson v. Heckler*, 743 F.2d 218, 221 (4th Cir.1984) (an ALJ may not simply disregard uncontradicted expert opinions in favor of his own opinion on a subject that he is not qualified to render).

Based on the above-stated reasons, I find that substantial evidence does not exist in the record to support the ALJ's finding that Helton was not disabled.

III. Conclusion

For the foregoing reasons, the Commissioner's and Helton's motions for summary judgment will be denied, the decision of the Commissioner denying DWIB benefits will be vacated, and Helton's claim will be remanded to the Commissioner for further development.

An appropriate order will be entered.

DATED: This 7th day of February, 2005.

/s/ Pamela Meade Sargent

UNITED STATES MAGISTRATE JUDGE